IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 210 (MS) OF 2004

Ram Kumar .....Petitioner.

Versus

Smt. Khushrabi Begum and Others. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri Sudhir Kumar, counsel for the petitioner.

By the present writ petition, the petitioner has prayed for a writ of certiorari for quashing the order dated 22.12.2002 passed by the Judge Small Causes Court/Civil Judge, Senior Division, Pauri and 03.11.2003 passed by District Judge, Pauri.

Briefly stated, a suit was filed by the respondent for ejectment of the petitioner on the ground of default in payment of rent and material alteration being S.C.C. Suit No. 2 of 1998; Smt. Khushrabi Begum and another Vs. Ram Kumar.

Another suit was filed against Sri Ram Kishan elder brother of the petitioner for his ejectment from adjoining shop on the same ground of default in payment of rent and material alteration in the tenanted premises.

During the pendency of the case, an application has been filed by the petitioners under Order II Rule 2 of the Code of Civil Procedure as well as framing the preliminary issue.

The Court below has rejected the application of the petitioners on 22.11.2002. A revision was preferred by the petitioner under Section 25 of the Provincial Small Cause

Courts Act before the District Judge, Pauri Garhwal against the order dated 22.1.2002 passed by the learned trial Court, which was dismissed on 03.11.2003.

The revisional court has recorded a finding that the suit is not barred by Order II Rule 2 of the Code of Civil Procedure. Admittedly, the petitioner, Ram Kumar is a tenant of one shop and the other shop is under the tenancy of his brother, Ram Kishan. Two suits were filed by the plaintiff separately.

In paragraph 26 (अ) of the written statement, the petitioner himself has alleged that two tenancies have been challenged by filing two suits. The averments are quoted below:-

"२६.अ. यह कि प्रतिवादी की किरायेदारी वाली दुकान के पश्चिम में प्रतिशत के भाई रामकिशन की किरायेदारी वाली दुकान है जिसके भवन स्वामी वादीगण हैं। वादीगण द्वारा प्रस्तुत वाद में प्रतिवादी के विरूध्द लगाये गये आरोपों के आधार पर ही प्रतिवादी के भाई रामकिशन के विरूध्द दिनांक २३.१२.१९९७ को माननीय सिविल जज जू०डि० कोटद्वार गढ़वाल के न्यायालय में किराया एवं बेदखली हेतु एक खफीफा वाद सं० १ सन १९९८ खुशरवी बेगम तथा अन्य बनाम राम किशन प्रस्तुत किया गया है जो सुनवायी हेतु विचाराधीन है। प्रतिवादी द्वारा उपरोक्त खफीफा वाद सं० १ सन १९९८में लगाये गये आक्षेपों के आधार पर ही प्रस्तुत वादी प्रतिवादी के विरूध्द प्रस्तुत किया गया है। इस प्रकार वादीगण के लिये प्रस्तुत वाद व उपरोक्त खफीफा वाद संख्या १ सन १९९८ का वाद का कारण एक ही है। ऐसी स्थिति में प्रतिवादी द्वारा आदेश-२ नियम २ दी०अ०सं० के अनुसार दोनो प्रतिवादीगण के विरूध्द एक साथ एक ही वादी प्रस्तुत करना चाहिये था। ऐसी स्थिति में प्रस्तुत वादी दी०प्र०सं० के आदेश-२, निमय २ से बंधित हैं।"

Admittedly, there are two tenants, one Ram Kumar and second Ram Kishan and as such, the two suits have been filed. Neither there is any similarity in the array of the parties, nor there is any similarity of cause of action. Eviction has been sought against both the tenants separately.

Merely, because there are two adjoining shops, it will not attract the applicability of Order II Rule 2 of Code of Civil Procedure. Judge Small Cause Court is directed to dispose of the suit itself within a period of four months form the filing of the certified copy of the order.

Consequently, the writ petition is disposed of.

(RAJESH TANDON, J.)

04.11.2004
P.S.R.